

APR 16 2009

**FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6039

DATE COMPLAINT FILED: July 14, 2008

DATE OF NOTIFICATION: July 16, 2008

DATE OF LAST RESPONSE: August 23, 2008

DATE ACTIVATED: October 2, 2008

EXPIRATION OF SOL: May 30, 2013

**COMPLAINANT:**

Fred Frost<sup>1</sup>

**RESPONDENTS:**

Lincoln Diaz-Balart for Congress and Jose A. Riesco,  
in his official capacity as treasurer  
Mario Diaz-Balart for Congress and Jose A. Riesco,  
in his official capacity as treasurer  
Ros-Lehtinen for Congress and Antonio L. Agiz,  
in his official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)(B)(ii)  
11 C.F.R. § 100.77  
11 C.F.R. § 102.17

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The complainant in this matter alleges that Lincoln Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer; Mario Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer; and Ros-Lehtinen for Congress and Antonio L. Agiz, in his official capacity as treasurer (collectively "Respondents") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to adhere to the requirements of the

<sup>1</sup> Despite Mr. Frost's claim that he is filing this complaint on behalf of the Miami-Dade Democratic Party, there is no available information linking Mr. Frost to the party committee.

Commission's regulations regarding joint fundraising. Specifically, the complainant submits a copy of an invitation to a fundraising event benefitting the three respondent political committees and alleges that the Respondents may have failed to: create or select a political committee to act as a fundraising representative; agree to a formula for allocating proceeds and expenses; sign a written agreement naming the fundraising representative and stating the allocation formula; notify potential contributors of the allocation formula when soliciting contributions; and establish a separate account for joint fundraising receipts and disbursements.

Based on all available information, including the complaint, copies of the solicitation for the event in question, as well as each Respondent's response to the complaint, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that the Respondents violated 11 C.F.R. § 102.17 by failing to adhere to the Commission's requirements governing joint fundraisers.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Joint Fundraising Event**

On May 30, 2008, Armando J. and Beatriz Bucelo hosted a fundraising event at their private residence in Miami, Florida, benefitting the Respondents. The hosts distributed invitations to the event via electronic mail and suggested that each attendee contribute \$200 per person to each of the three participating candidates, payable directly to the Respondent Committees. Approximately fifty guests attended the event, which raised approximately \$6,000 per candidate, with each contribution totaling less than \$200.

Although a disclaimer on the invitation states "Paid for by Ros-Lehtinen for Congress Lincoln Diaz Balart [sic] for Congress and Mario Diaz Balart [sic] for Congress," it appears that the event was conducted with minimal expenses, and almost all the expenses were incurred by

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1 the Bucelos. There was no expense for the venue since the Bucelos organized the event at their  
2 private residence. In addition, the Bucelos did not hire a caterer, offer valet parking, or provide  
3 entertainment for the event. It appears that the total cost for the event was less than \$400 for  
4 food and beverages and a *de minimis* payment for a photographer for the event. It is unclear  
5 whether one or all of the Respondents or the hosts paid for the photographer. A review of  
6 disclosure reports confirms that the three Respondent committees did not form a joint  
7 fundraising entity for the May 30, 2008, event, although around this time, Lincoln and Mario  
8 Diaz-Balart did register a joint fundraising entity together with the Republican Party of Florida.<sup>2</sup>

9 The complainant provided no information about the event other than a copy of the  
10 invitation. Thus, it appears that the allegations are based entirely on the invitation and any  
11 inferences that can be drawn from it. In their legal argument, the Respondents explain that the  
12 event was a "low-cost grass-roots event" planned and funded by the Bucelos, and maintain that  
13 the exemption to the definition of "contribution" under 2 U.S.C. § 431(8)(B)(ii), also known as  
14 the "volunteer exemption," allows individuals to contribute up to \$1,000 for invitations to, and  
15 food and beverages served at, the individual's residential premises. Since the event's expenses  
16 qualified for the "volunteer exemption," all the Respondents assert that the joint fundraising  
17 requirements do not apply, and they request that the Commission find no reason to believe that a  
18 violation occurred and dismiss this matter. One of the three Respondent Committees requests  
19 that if the Commission "goes forward" with this matter that it be assigned to the Commission's  
20 Alternative Dispute Resolution program ("ADRO") for "appropriate action."

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<sup>2</sup> The joint fundraising committee, the Lincoln and Mario Diaz-Balart Florida Victory Committee, filed a statement of organization with the Commission on May 28, 2008. It filed its first disclosure report with the Commission in July 2008, disclosing \$400,900 in contributions and \$339,604 in disbursements. However, the earliest receipts dated to June 25, 2008, and the earliest disbursements were made on June 27, 2008, after the date of the Bucelo event.

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**B. Joint Fundraising Requirements**

The Commission's joint fundraising regulations at 11 C.F.R. § 102.17(a) allow political committees to engage in joint fundraising efforts, but to do so, they must either establish a separate committee or designate a participating committee as the fundraising representative. *See* 11 C.F.R. § 102.17(a)(1)(i). Participants must enter into a written agreement that identifies the fundraising representative and states the formula for the allocation of fundraising proceeds. *See* 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for a period of three years and make it available to the Commission upon request. *Id.*

The regulations also provide that a joint fundraising notice shall be included with every solicitation for contributions. 11 C.F.R. § 102.17(c)(2). The notice shall include the names of all participating committees; the allocation formula to be used; a notice that, notwithstanding the stated allocation formula, contributors may designate that their contributions be allocated differently; and a notice that the allocation formula may change if a contributor makes a contribution that would exceed the amount that a contributor may give to a participant. 11 C.F.R. § 102.17(c)(2)(i).

Furthermore, joint fundraising participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. 11 C.F.R. § 102.17(c)(3)(i). Gross proceeds as well as expenses and the distribution of net proceeds from joint fundraising efforts are to be allocated according to the formula provided in the written agreement. *See* 11 C.F.R. § 102.17(c)(6)-(7).

The requirements of the regulations are meant to create a "clearinghouse" process for all activities related to the joint fundraising event in order to prevent prohibited or excessive contributions, and to ensure that receipts and disbursements related to the event are properly

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1 allocated and reported. *See* Advisory Opinion 2007-24 (Burkee/Walz) (instructing two political  
2 committees as to the procedures governing joint fundraising).

3       The fundraising event in this matter appears to trigger the joint fundraising requirements  
4 of 11 C.F.R. § 102.17. Each of the Respondent Committees participated in and benefited from  
5 one fundraising event that was organized on their behalf and benefited them jointly. Although it  
6 appears that virtually all of the expenses for the event were paid by the event's hosts, the  
7 Bucelos, and did not involve large sums, there exists the possibility that at least the cost of the  
8 event photographer may have been shared by the committees. In addition, the Respondents  
9 acknowledge that no fundraising representative kept records or screened contributions received  
10 at the event, and no separate depository account was used for the receipt and disbursement of the  
11 joint fundraising proceeds and for the allocation of the costs for the event. Thus, the  
12 Respondents' failure to adhere to the joint fundraising requirements may be a violation of the  
13 Commission's regulations.

14       However, we recommend that the Commission dismiss the complaint. The  
15 circumstances surrounding this low-budget, one-time event indicate that the Respondents'  
16 omission of the joint fundraising controls did not prevent accurate recordkeeping and disclosure,  
17 nor did it enhance the possibility of the Committees' receipt of excessive or prohibited  
18 contributions. *See* AO 2007-24 (Burkee/Walz) (instructing two political committees as to the  
19 procedures governing joint fundraising). First, the joint costs the Respondent Committees would  
20 have had to report through a joint fundraising representative were *de minimis* payments made to  
21 the event photographer. The joint fundraising representative is charged with paying fundraising  
22 costs from funds advanced by the participating committees and from the proceeds of the event  
23 and assures that no one participating committee advances more than its proportionate share of

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1 costs, or that no one committee advances funds that would be considered an excessive  
2 contribution to another participating committee. See 11 C.F.R. § 102.17(b)(2) and (3). In this  
3 matter, because the Bucelos funded most of the event's costs, and the cost of the photographer  
4 was apparently *de minimis*, the participating committees advanced no funds for the event that  
5 could have resulted in excessive contributions to each other.

6 There also appear to have been no shared receipts requiring distribution by a joint  
7 fundraising representative. The fundraising representative is responsible for allocating the  
8 proceeds from the event pursuant to a predetermined allocation formula. See 11 C.F.R.  
9 § 102.17(c)(1). However, the invitation to the event instructed potential contributors to direct  
10 contributions to the individual Respondent Committees, each of which screened its contributions  
11 for compliance with the Act's limitations and prohibitions. Thus, because the proceeds from the  
12 event do not appear to have been centrally collected, there is no concern over the misallocation  
13 of proceeds from the fundraiser.<sup>3</sup>

14 Finally, the regulations require that in order to ensure accurate financial recordkeeping,  
15 the participants shall establish a separate depository account used solely for the receipt and  
16 disbursement of proceeds, as well as for the payment of costs related to the event, according to  
17 the allocation formula. See 11 C.F.R. § 102.17(c)(3), (6) and (7). Again, the minimal costs of  
18 the event and the direct contributions to the participating committees make the requirement of a  
19 separate depository account for proper allocation and recordkeeping of receipts and  
20 disbursements almost unnecessary in this case.

21 This matter is factually distinct from previous instances where the Commission has found  
22 violations arising from joint fundraising events. In MUR 5780 (Santorum 2006), the

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<sup>3</sup> We note, however, that it is possible that certain contributors may have written one check and intended the proceeds be distributed evenly among the committees.

1 Commission found reason to believe that Santorum 2006 and the Republican Federal Committee  
2 of Pennsylvania ("RFCP") failed to establish or designate a joint fundraising committee where  
3 they held a joint fundraising event at a supporter's home, did not enter into a written agreement  
4 or determine an allocation formula, and did not allocate receipts and expenditures according to  
5 an established formula. In the Santorum/RFCP matter, the participating committees coordinated  
6 disbursements for the event and shared significant expenses without publishing an allocation  
7 formula. Furthermore, the participating committees, with no predetermined formula, coordinated  
8 how the proceeds from the event would be distributed between the two committees. For  
9 example, the Santorum/RFCP event offered a photograph with President Bush to donors  
10 contributing at least \$10,000, but it did not specify how those contributions would be disbursed  
11 between the participating committees. In addition, the event attracted an estimated 500 attendees  
12 and raised \$1.7 million.<sup>4</sup>

13 In this matter, as in the Santorum/RFCP matter, the May 30, 2008, event in Miami,  
14 Florida, was a joint fundraising event hosted by private individuals benefiting multiple  
15 committees. However, unlike the Santorum/RFCP matter, there is no evidence that the  
16 Respondents incurred substantial expenses. In addition, there were no shared receipts from the  
17 event as there were in the Santorum/RFCP event because the Respondents in this matter each  
18 collected and screened contributions separately. Finally, as previously discussed, the  
19 Santorum/RFCP raised \$1.7 million, while the event in this matter raised only \$16,000.

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<sup>4</sup> The Diaz-Balart matter and the Santorum/RFCP MUR address the issue of whether two or more political committees engaged in joint activity have an obligation to create a joint fundraising entity or designate a fundraising representative. There are numerous MURs involving compliance with joint fundraising regulations when two or more political committees have already registered with the Commission under section 102.17. See MUR 5954 (Reichert Washington Victory Committee); MUR 5225 (Hillary Rodham Clinton for U.S. Senate); and MUR 5247 (North Carolina Republican Executive Committee). These matters address the rules of joint fundraising, but do not examine the threshold issue of when must a joint fundraising entity be registered or designated.

1           The Respondents maintain that the "volunteer exemption" of 2 U.S.C. § 431(8)(B)(ii) and  
2   11 C.F.R. § 100.77, which could permit the Bucelos to incur costs of up to \$1,000-\$2,000 related  
3   to hosting the fundraiser without making a contribution or expenditure on behalf of any of the  
4   participating committees, somehow creates an exception to the joint fundraising requirements,  
5   although they offer no reasoning for this conclusion. The "volunteer exemption" allows an  
6   individual to voluntarily incur costs for invitations, food, and beverages on their residential  
7   premises up to \$1,000 with respect to a single candidate or \$2,000 on behalf of all political  
8   committees of each political party in any calendar year. The cost of food and beverages for the  
9   Miami event was less than \$1,000 and thus there is no dispute over whether the Bucelos' costs  
10   qualified for the exemption from the definition of "contribution." In addition, the fact that there  
11   were minimal expenses related to the event contributed to our recommendation to dismiss this  
12   matter. Nevertheless, there is no basis to conclude that events qualifying under 11 C.F.R.  
13   § 100.77 for a contribution exemption are also *per se* excepted from the joint fundraising  
14   requirements.

15           Accordingly, we do not believe pursuing this matter would be an efficient use of  
16   Commission resources and recommend that the Commission exercise its prosecutorial discretion  
17   pursuant to *Heckler v. Chaney*, 470 U.S. § 821 (1985), and dismiss the allegation that Lincoln  
18   Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer, Mario Diaz-  
19   Balart for Congress and Jose A. Riesco, in his official capacity as treasurer, and Ros-Lehtinen for  
20   Congress and Antonio L. Agiz, in his official capacity as treasurer violated 11 C.F.R. § 102.17  
21   by failing to adhere to the Commission's regulations pertaining to joint fundraising. Because we  
22   are recommending dismissal, we make no recommendations regarding respondent's request for  
23   further consideration by the ADRO.

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**III. RECOMMENDATIONS**

1. Dismiss the allegation that Lincoln Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer, Mario Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer, and Ros-Lehtinen for Congress and Antonio L. Agiz, in his official capacity as treasurer violated 11 C.F.R. § 102.17.
2. Approve the attached Factual and Legal Analyses.
3. Approve the appropriate letters.

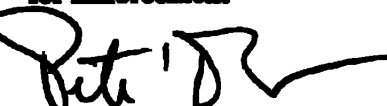
Thomasenia P. Duncan  
General Counsel

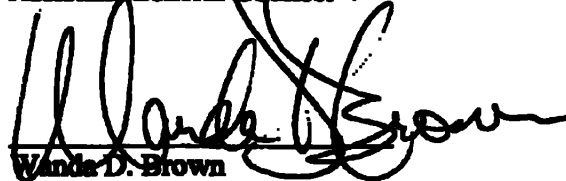
Ann Marie Terzaken  
Associate General Counsel  
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4/16/09  
Date

BY:

  
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